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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,176	09/15/2003	Gregory Richard Eberl	02-0302 (US01)	2830
23410	7590	10/15/2007		
Vista IP Law Group LLP 2040 MAIN STREET, 9TH FLOOR IRVINE, CA 92614			EXAMINER GIBSON, ROY DEAN	
			ART UNIT	PAPER NUMBER
			3739	
			MAIL DATE	DELIVERY MODE
			10/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/663,176

Applicant(s)

EBERL ET AL.

Examiner

Roy D. Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-32 and 35 is/are allowed.
- 6) ☒ Claim(s) 1-7, 12, 33 and 34 is/are rejected.
- 7) ☒ Claim(s) 8-11, 13, 14 and 16-28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Entry of Amendment

Applicant's amendment filed on August 7, 2007 is acknowledged. Claims 1-14 and 16-35 are currently pending.

Prior Rejections or Objections

The following comments pertain to the rejections or objections in the most recent Office action mailed on May 4, 2007. Rejections under 35 U.S.C. 102 are withdrawn, however, new rejections under 35 U.S.C. 103 are presented below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 12, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lim et al. (6,488,688).

Regarding claims 1, 6, 7 and 12, Lim et al. disclose a medical device with an elongate shaft and an inflatable semi-compliant balloon located on the elongate shaft comprising a polymer made from the same material as claimed and of a thickness as claimed (Tecophilic which is equivalent to Tecoflex as stated by Applicant on page 7 of the Specification and with a wall thickness of the balloon disclosed as 0.0015" or within the claimed range of 0.0005-0.005"), therefore, the balloon, when hydrated with an

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electrolytic solution, would inherently have the same tensile strength when inflated to about one atmosphere (col. 3, line 59-col. 4, line 6, col. 5, lines 48-66 and col. 6, lines 35-50).

The claim was amended by the applicant to include "ablation balloon" in an attempt to overcome the Lim et al. reference. However, the medical probe was not structurally amended to provide the means for ablation now claimed. Therefore, the examiner argues that if the structure of the medical device of Lim et al. is the same, the capability would be the same, particularly if "chemical ablation" is considered. The examiner suggests that claim 1 could be amended to include an electrode as in claim 28 to place the claim in condition for allowance.

Regarding claim 2, the semi-compliant balloon can be expanded by 4% radially when inflated by 10.2 atm (col. 3, lines 47-51).

Regarding claim 3, Table 1 of Lim et al. in col. 8, discloses the semi-compliant balloon OD increases by about 50% at 195 psi.

Regarding claims 4 and 5, the examiner maintains that the balloon of Lim et al. would inherently be capable of hydration from 10-40% volume (col. 8, line 54).

Regarding claims 33 and 34, Lim et al. discloses the device is configured to be intravascularly introduced within a heart of the patient.

Allowable Subject Matter

Claims 29-32 and 35 are allowed.

Claims 8-11, 13, 14 and 16-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Maguire et al. (6,547,788) disclose an ablation balloon with a conductive electrode fabricated from an inherently porous polyurethane material wherein ablation is provided by electrically coupling the fluid within the porous balloon to an RF current source (col. 45, line 57-col. 47 line 110).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

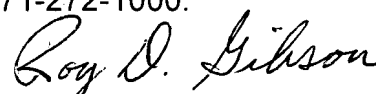
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


/Roy D. Gibson/
Primary Examiner
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October 2, 2007